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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,044	03/12/2004	Courtney W. Turpen	653.02	8581

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EXAMINER

FETSUGA, ROBERT M

ART UNIT	PAPER NUMBER
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3751

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

6

<b>Office Action Summary</b>	<b>Application No.</b> 10/800,044	<b>Applicant(s)</b> TURPEN, COURTNEY W.	
	<b>Examiner</b> Robert M. Fetsuga	<b>Art Unit</b> 3751	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 February 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:  
    - 1. ☐ Certified copies of the priority documents have been received.
    - 2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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1. Applicant's election without traverse of Group I in the reply filed on February 09, 2006 is acknowledged.
2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the subject matter set forth in claims 8 and 20, "twist-lock" fasteners set forth in claim 13, and the subject matter set forth in claim 21, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR

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1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "return" set forth in claims 1, 9 and 22, the subject matter set forth in claims 3 and 16, the subject matter set forth in claim 10, "securing elements" set forth in claim 11, and the subject matter set forth in claim 14, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

4. Claims 1-8 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Claim 1 recites an upper flange "being constructed so as to support the weight of the spa on the rim of the gunite spa

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cavity". Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner. The specification discloses a mortar base 212 to provide support.

5. Claim 6 is rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

The claim recites a "readily" "removable" shell.

Implementation of this subject matter is neither taught by the instant disclosure nor evident to the examiner. The backfill 204, as well as the glue/bonding (sentence bridging pages 12 and 13), would appear to preclude this claimed feature.

6. Claims 8, 20 and 21 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

Implementation of the claimed subject matter is neither taught by the instant disclosure nor evident to the examiner.

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7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 1, 4-7, 9 and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by DeVane.

The DeVane reference discloses a spa assembly comprising: a shell including a tub portion 10, a flange 12 and a spillway (Fig. 3); and plumbing elements including a suction 23 and a return 17, as claimed. Re claim 1, the shell is capable of being fitted into a gunite spa cavity as functionally recited, and in fact is supported in a cement cavity (swimming pool). Re claim 4, the "vacuum-formed" recitation is a product-by-process limitation which does not serve to limit the product claim. Re

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claim 9, the flange is capable of allowing masonry components to be laid thereon as functionally recited.

9. Claims 1, 4-14 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holcomb and Craig et al.

The Holcomb reference discloses a spa assembly comprising: a shell including a tub portion 12 and a flange 13; and plumbing elements including a suction 19 and a return 18. Re claim 1, the shell is capable of being fitted into an existing spa cavity as functionally recited, and in fact is supported in a gunite cavity 37. Re claim 4, the "vacuum-formed" recitation is a product-by-process limitation which does not serve to limit the product claim. Re claim 6, the shell is considered to be "readily insertable and removable" in the same sense as with applicant's disclosed invention. Re claim 9, the flange is capable of allowing masonry components to be laid thereon as functionally recited, and in fact appears to be contemplated by Holcomb in the sentence bridging columns 2 and 3. Re claim 10, no sandbags are disclosed by Holcomb. Re claim 11, the flange is capable of receiving securing elements. Therefore, Holcomb teaches all claimed elements except for the provision of a spillway, and the provision of operating controls.

Although the shell of the Holcomb spa assembly does not include a spillway, as claimed, attention is directed to the

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Craig et al. (Craig) reference which discloses an analogous spa assembly which further includes a shell 18 having a spillway 50. Therefore, in consideration of Craig, it would have been obvious to one of ordinary skill in the spa assembly art to associate a spillway with the Holcomb shell in order to enable installation adjacent a swimming pool.

Although the Holcomb spa assembly does not include operating controls, as claimed, attention is again directed to Craig which discloses operating controls C1. Therefore, in further consideration of Craig, it would have been obvious to one of ordinary skill in the spa assembly art to associate operating controls with the Holcomb spa assembly in order to facilitate operation.

10. Claims 2, 3, 15, 16, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Holcomb and Craig as applied to claims 1 and 9 above, and further in view of Price.

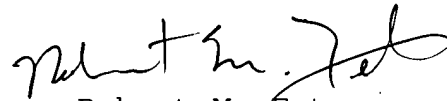
Although the shell of the Holcomb spa assembly does not include a notch, as claimed, attention is directed to the Price reference which discloses an analogous spa assembly which further includes a shell 17 having a notch 67. Therefore, in consideration of Price, it would have been obvious to one of ordinary skill in the spa assembly art to associate a notch with the Holcomb shell in order to enable tile installation.



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11. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

12. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

A handwritten signature in black ink, appearing to read 'Robert M. Fetsuga', is written over the typed name.

Robert M. Fetsuga  
Primary Examiner  
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